



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH 5TH STREET  
KANSAS CITY, KANSAS 66101

15 SEP 2004

VIA FIRST-CLASS MAIL  
AND CERTIFIED MAIL  
Return Receipt Requested

Article No: 7002 0860 0006 5962 0018

Danielle Reader  
Sr. Facility Compliance Manager  
Clean Harbors Environmental Services, Inc.  
2247 S. Hwy 71  
Kimball, NE 69145

Dear Ms. Reader:

RE: Off-Site Rule Unacceptability Letter of Warning  
Clean Harbors Environmental Services, Inc.  
Kimball, Nebraska  
EPA RCRA ID No. NED981723513

This letter is to inform you that the U.S. Environmental Protection Agency (EPA) has concerns that conditions exist at the Clean Harbors Environmental Services, Inc. facility in Kimball, Nebraska (Clean Harbors) which could render the facility unacceptable for the receipt of off-site waste from Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) removal or remedial actions. This determination is made under EPA's procedures for planning and implementing off-site response actions (40 Code of Federal Regulations (CFR) § 300.440 and 58 Federal Register (FR) 49200 (Sept. 22, 1993) (the Off-site Rule) (copy enclosed).

Pursuant to 40 CFR § 300.440(c)(3), EPA's concerns about Clean Harbors' potential unacceptability are based on the occurrence of releases and relevant violations at or affecting the unit(s) receiving CERCLA waste. Specifically, during a Compliance Evaluation Inspection (CEI) conducted on April 10, 2002, EPA inspectors noted hazardous waste releases from the solids feed conveyor and ash management building, and storage of incompatible wastes together in the drum storage area. In addition, previous Nebraska Department of Environmental Quality (NDEQ) inspections have found that Clean Harbors stored free liquids in unpermitted areas and repeatedly exceeded permitted arsenic feed rates. During the most recent NDEQ inspection on March 16, 2004, there were additional violations found. Some were repeated violations, and other violations may be serious enough to cause a notice of unacceptability, including: releases from the solids feed conveyor and the storage of leaking containers of hazardous waste.

### **Relevant Violations at Clean Harbors**

Since Clean Harbors is regulated under the Resource Conservation and Recovery Act (RCRA) Subtitle C, EPA has some concerns that Clean Harbors may not meet the acceptability criteria of 40 CFR § 300.440(b)(2)(ii)(A). EPA's inspection of Clean Harbors on April 10, 2002 has revealed hazardous waste released from the solids feed conveyor and hazardous waste ash released from the ash management building. In addition, during the EPA CEI at Clean Harbors, the following violations of Clean Harbors' hazardous waste handling permit were noted:

(1) The releases of hazardous waste show a failure to operate the facility (solid feed to the Thermal Oxidation Unit and ash management) to minimize the possibility of any unplanned sudden or non-sudden release of hazardous waste constituents to the environment, and to prevent fugitive emissions (a violation of Permit Condition II.A. ref. 40 CFR § 264.31).

(2) Seven containers were found in the drum storage area that contained incompatible wastes (a violation of Permit Condition III.C.5.c).

The violations listed above are relevant violations under the criteria of 40 CFR § 300.440(b) because the violations affect units receiving CERCLA waste for treatment, and because the violations include significant deviations from regulations or permit conditions designed to: ensure that CERCLA waste is destined for and delivered to authorized facilities; prevent releases of hazardous waste, hazardous constituents, or hazardous substances to the environment; ensure early detection of such releases, or compel corrective action for such releases.

During the NDEQ CEI at Clean Harbors March 16, 2004, the following relevant violations of Clean Harbors' hazardous waste handling permit were also noted:

(1) Failure to store wastes containing free liquids in permitted storage areas (this is a violation of RCRA permit, Part III.B.8.b). The NDEQ inspector noted that the contents of the storage containers were leaking.

(2) Failure to keep containers of hazardous waste closed except when adding or removing waste (a violation of RCRA permit, Part III.C.3).

(3) Failure to maintain required aisle space (a violation of RCRA permit, Part II.I.4).

(4) NDEQ also noted concerns regarding Clean Harbors' failure to manage leaking or damaged containers (a possible violation of Permit Condition III.C.1).

EPA has also noted instances of repeat violation of the permitted arsenic feed rate for the incinerator (RCRA permit, Part V.C.5.a). EPA considers these repeat violations to meet the criteria of relevant violations discussed above. Such repeat violations could affect Clean Harbors' continued ability to receive and treat CERCLA waste.

Clean Harbors' Response to this Letter

To avoid a formal determination of unacceptability by EPA, Clean Harbors must submit a written plan documenting how it will prevent the violations referenced above from occurring again in the future. Such plan must be submitted to EPA within 30 days of Clean Harbors' receipt of this letter. In addition, at Clean Harbors' written request, EPA Region 7 will meet with Clean Harbors to discuss the basis for the underlying violation determination, and its relevance to Clean Harbors' acceptability to receive CERCLA wastes. Clean Harbors' plan or its written request should be addressed to the Regional Off-site Contact (ROC) at the following address:

Kori Kuehl  
ARTD/RESP  
Regional Off-site Contact  
U.S. Environmental Protection Agency  
Region 7  
901 N. 5<sup>th</sup> St.  
Kansas City, Kansas 66101

Please note that if Clean Harbors does not submit the written plan, there is a possibility that EPA will determine that Clean Harbors is unacceptable for the future receipt of CERCLA wastes.

If an informal conference is held, and you submit a written plan within the time limits described above, EPA shall decide whether or not the information you may provide is sufficient to show that Clean Harbors is operating in physical compliance with respect to the relevant violations listed above, the proposals to eliminate repetition of the same violations are satisfactory, and the relevant releases described herein have been eliminated or controlled.

This letter is being sent by both certified mail and first class mail, in order to ensure that you receive it promptly. If you have any questions regarding this letter you may contact Ms. Kori Kuehl of my staff at (913) 551-7154, or Mr. Alex Chen, Office of Regional Counsel, at (913) 551-7962.

Sincerely,



William A. Spratlin  
Director  
Air, RCRA and Toxics Division

Enclosure

cc: R. Craig Lackey, Esq.  
Clean Harbors Environmental Services, Inc.  
Bill Gidley  
Nebraska Dept. of Environmental Quality